

UTILITIES DIVISION[199]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code sections 17A.4, 17A.7, and 476.1 and 2009 Iowa Acts, House File 810 [new Iowa Code Supplement section 476.48], the Utilities Board (Board) gives notice that on November 10, 2009, the Board issued an order in Docket No. RMU-2009-0010, In re: Small Wind Innovation Zones, “Order Commencing Rule Making.” The Board is noticing for public comment proposed amendments to 199 IAC 15.19(476C) and new rule 199 IAC 15.22(476). The proposed amendments and new rule deal with small wind innovation zones, which are the subject of 2009 Iowa Acts, House File 810.

In 2009, the General Assembly enacted 2009 Iowa Acts, House File 810 [Iowa Code Supplement section 476.48], which directs the Board to establish and administer a small wind innovation zone program. The statute provides that the program is “to facilitate and expedite interconnection of small wind energy systems with electric utilities” within areas designated as small wind innovation zones.

To be designated as a small wind innovation zone, an area must be “a political subdivision of this state, including but not limited to a city, county, township, school district, community college, area education agency, institution under the control of the state board of regents, or any other local commission, association, or tribal council which adopts, or is encompassed within a local government which adopts, the model ordinance...” (2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(1)“c”]).

The model ordinance referred to in the statute is to be jointly developed by the Iowa League of Cities, the Iowa State Association of Counties, the Iowa Environmental Council, the Iowa Wind Energy Association, and representatives from the utility industry. The model ordinance is to be available on the Web sites of the Iowa League of Cities and Iowa State Association of Counties. The statute does not describe the content of the model ordinance but states that a local government adopting the ordinance “shall establish an expedited approval process with regard to small wind energy systems in compliance with the ordinance” (2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(3)]).

In addition to adopting the model ordinance, an area seeking to be designated as a small wind innovation zone must also be served by an electric utility that: “has agreed to utilize the model interconnection agreement to contract with the small wind energy system owners who agree to its terms” (2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(2)“b”]).

The model interconnection agreement referred to in the statute is the subject of a separate rule-making docket, Docket No. RMU-2009-0008, “Electric Interconnection of Distributed Generation Facilities,” which was published in the Iowa Administrative Bulletin on October 7, 2009, as **ARC 8201B**. The model interconnection rules as proposed would be mandatory for rate-regulated electric utilities and voluntary for non-rate-regulated electric utilities. An oral presentation in Docket No. RMU-2009-0008 is scheduled for December 10, 2009.

The proposed rules for implementing 2009 Iowa Acts, House File 810, include new rule 199 IAC 15.22(476), “Small wind innovation zones,” and changes to 199 IAC 15.19(476C), “Certification of eligibility for wind energy and renewable energy tax credits under Iowa Code chapter 476C.” The definitions in proposed subrule 15.22(1) are primarily based on the definitions and descriptions in 2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48]. The definition of “model interconnection agreement” is explicitly tied to the standard interconnection agreements being developed separately in Docket No. RMU-2009-0008. Proposed subrule 15.22(2) describes the form

and content of the application filing requirements for the Board's designation of small wind innovation zones under 2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(2)"b"].

In addition to requiring development of the model interconnection agreement, 2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(4)], also requires the Board to develop a procedure for modifying the model interconnection agreement based on changes mutually agreeable to the utility and interconnecting generator. This procedure and associated filing requirements are described in proposed subrule 15.22(3).

2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(6)], requires the Board to file a report with the General Assembly before January 1 each year, providing annual information about the small wind innovation zones created and about the energy produced by small wind energy systems in each zone. Proposed subrule 15.22(4) requires utilities (including non-rate-regulated utilities) that serve small wind innovation zones to annually report the energy produced by small wind energy systems in each zone for the previous calendar year. The first utility reports, due April 1, 2010, will be for calendar year 2009; that information will be included in the Board's second report to the General Assembly, due before the end of 2010. The first report to the General Assembly, due before the end of 2009, will likely describe the progress of the development of the model ordinance by the Iowa League of Cities, et al., and progress of the relevant Board rule-making dockets (i.e., Docket Nos. RMU-2009-0008 and RMU-2009-0010).

2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(5)], provides: "The owner of a small wind energy system operating within a small wind innovation zone shall qualify for the renewable energy tax credit pursuant to [Iowa Code] chapter 476C." This language appears to create a new ownership category for Iowa Code chapter 476C eligibility, separate from the current ownership requirements of Iowa Code section 476C.1(6)"b." Although separate, the Board's reading of the statute indicates that the new ownership category in 2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(5)], is neither superior nor subordinate to the ownership requirements of Iowa Code section 476C.1(6)"b," which means it would not affect the queue order of eligible applicants or applicants in the waiting list, nor be subject to the ownership limitations (no more than two eligible facilities, with additional equity percentage limitations) specifically attached to Iowa Code section 476C.1(6)"b." The proposed amendments to paragraphs 199 IAC 15.19(1)"b," 199 IAC 15.19(1)"d," and 199 IAC 15.19(1)"e" clarify these points.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before December 22, 2009. The statement should be filed electronically through the Board's Electronic Filing System (EFS). Instructions for making an electronic filing can be found on the EFS Web site at <http://efs.iowa.gov>. Any person who does not have access to the Internet may file comments on paper pursuant to 199 IAC 14.4(5). An original and ten copies of paper comments shall be filed. Both electronic and written filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author's name and address and make specific reference to this docket. All paper communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on January 11, 2010, in the Board's hearing room at the address listed above.

Persons with disabilities who require assistive services or devices to observe or participate should contact the Board at (515)281-5256 at least five days in advance of the scheduled date to request that appropriate arrangements be made.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3(17A,474,476,78GA,HF2206) is applicable to these amendments.

These amendments are intended to implement Iowa Code section 476.1 and 2009 Iowa Acts, House File 810 [Iowa Code Supplement section 476.48].

The following amendments are proposed.

ITEM 1. Amend paragraph **15.19(1)“b,”** introductory paragraph, as follows:

b. Information regarding the ownership of the facility, including the legal name of each owner, information demonstrating the legal status of each owner, and the percentage of equity interest held by each owner. The “legal status of each owner” refers to either ownership of a small wind energy system operating in a small wind innovation zone as defined in 2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(1)], and 199 IAC 22.1(476), or, alternatively, the ownership requirements of Iowa Code Supplement section 476C.1(6) “b,” which provides that an eligible renewable energy facility must be at least 51 percent owned by one or more or any combination of the following:

ITEM 2. Amend paragraph **15.19(1)“d”** as follows:

d. For any owner meeting the eligibility requirements of Iowa Code section 476C.1(6) “b” with an equity interest in the facility equal to or greater than 51 percent, a statement attesting that the owner does not have an equity interest greater than 10 percent in any other eligible renewable energy facility.

ITEM 3. Amend paragraph **15.19(1)“e”** as follows:

e. For any owner meeting the eligibility requirements of Iowa Code section 476C.1(6) “b” with an equity interest in the facility greater than 10 percent and less than 51 percent, a statement attesting that the owner does not have an equity interest equal to or greater than 51 percent in any other eligible renewable energy facility.

ITEM 4. Adopt the following **new** rule 199—15.22(476):

199—15.22(476) Small wind innovation zones.

15.22(1) Definitions. For purposes of this rule:

“*Electric utility*” means a public utility that furnishes electricity to the public for compensation.

“*Model interconnection agreement*” means the applicable standard interconnection agreement under 199 IAC 45, including the standard interconnection agreement for review Level 1 under 199 IAC 45.14(476) and the standard interconnection agreement for review Levels 2 through 4 under 199 IAC 45.17(476).

“*Model ordinance*” means the model ordinance developed pursuant to 2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(3)], which when adopted will be posted on the Web sites of the Iowa League of Cities at www.iowaleague.org and the Iowa State Association of Counties at www.iowacounties.org.

“*Small wind energy system*” means a wind energy conversion system that collects and converts wind into energy to generate electricity, which has a nameplate generating capacity of 100 kilowatts or less.

“*Small wind innovation zone*” means a political subdivision of this state, including but not limited to a city, county, township, school district, community college, area education agency, institution under the control of the state board of regents, or any other local commission, association, or tribal council which adopts, or is encompassed within a local government which adopts, the model ordinance.

15.22(2) Application for small wind innovation zone designation. A political subdivision of this state, including but not limited to a city, county, township, school district, community college, area education agency, institution under the control of the state board of regents, or any other local commission, association, or tribal council, may apply to the board for designation as a small wind innovation zone under 2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48]. The application must include the following information:

a. The name, location, and description of the political subdivision seeking designation as a small wind innovation zone.

b. Contact information for the applicant filing on behalf of the political subdivision, including legal name, address, telephone number, and, as applicable, facsimile transmission number and electronic mail address.

c. If the political subdivision is other than a local government, identification of the local government that has either adopted the model ordinance or is in the process of amending an existing zoning ordinance to comply with the model ordinance and the relationship of the political subdivision to the local government.

- d. A copy of the model ordinance adopted by the local government or copy of a pending amendment to an existing zoning ordinance intended to comply with the model ordinance.
- e. Date the model ordinance was adopted or anticipated date of adoption of the pending amendment to an existing zoning ordinance intended to comply with the model ordinance.
- f. Identification of the electric utilities that serve the political subdivision.
- g. Documentation from the electric utilities serving the political subdivision and confirming that they are either:
 - (1) Rate-regulated utilities subject to the provisions of 199 IAC 45; or
 - (2) Non-rate-regulated utilities not subject to the provisions of 199 IAC 45 but which nonetheless agree to utilize the standard forms, procedures, and standard interconnection agreements of 199 IAC 45 within the political subdivision to contract with small wind energy system owners who agree to the terms and conditions therein.

15.22(3) Motion for modification of a model interconnection agreement in a small wind innovation zone. An electric utility and the owner of a small wind energy system in a small wind innovation zone may jointly seek to modify a model interconnection agreement by jointly filing a motion for board approval. The motion must include the following information:

- a. The name, location, and description of the political subdivision designated as a small wind innovation zone;
- b. The interconnecting electric utility;
- c. Information regarding the owner of the small wind energy system, including legal name, address, telephone number, and, as applicable, facsimile transmission number and electronic mail address;
- d. Description of the small wind energy system, including location and nameplate generating capacity;
- e. A copy of the modified model interconnection agreement clearly identifying the proposed modifications;
- f. A description of the reasons and circumstances that require the modifications; and
- g. Signed statements from the electric utility and the owner of the small wind energy system attesting that the proposed modifications to the model interconnection agreement are mutually agreeable.

15.22(4) Annual reporting requirement. A current listing of small wind innovation zones shall be maintained on the board's Web site at www.state.ia.us/iub. Beginning April 1, 2010, each electric utility shall file an annual report for the previous calendar year, listing the nameplate kW capacity and annual kWh production of each interconnected small wind energy system, for each small wind innovation zone served by the electric utility.